MYSORE HIGH COURT

K.N. Marularadhya

Vs

Mysore State

Writ Petitions Nos. 2472, 2471, 2212, 1577, 1578, 1621, 1622, 1625, 1563, 1682, 1728, 1986, 2087, 2700, 2848, 3062, 2970, 3032, 3120 to 3153, 1623, 1624, 1626, 3022, 3024, 3812 to 3824, 3173, 4075, 4076, 3827, 3501 to 3515, 3833, 3834, 4208, 4209, 4213, 4244, 4218, 4219, 4207, 3270, 3325, 3095 to 3098, 2715 to 2717 and 3851 of 1968

(A.R. Somnath Iyer and Ahmed Ali Khan, JJ.)

03.02.1969

JUDGMENT

Somnath Iyer, J.

1. In these writ petitions, many common questions of law arise for decision. Those questions pertain either to the constitutionality or to the interpretation of the provisions of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966 which came into force on May 1, 1968.

2. In the new State of Mysore which came into being under the provisions of the States Reorganisation Act on November 1, 1956, there were six laws operating with respect to the regulation of the marketing of Agricultural produce either on one species or of the other. They were: The Madras Commercial Crops Markets Act, 1933 (Madras Act 20 of 1933) as in force in Bellary District; the Madras Commercial Crops Markets Act, 1933 (Madras Act 20 of 1933) as in force in the district of South Kanara and the taluk of Kollegal; the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act 22 of 1939) as in force in the districts of Dharwar, Belgaum, Bijapur and North Kanara which were originally in the State of Bombay and which became part of the new State of Mysore; the Hyderabad Agricultural Market Act, 1339-F (Hyderabad Act 2 of 1339 Fasli) which was in force in the districts of Bidar, Gulbarga and Raichur; the Mysore Agricultural Produce Markets Act, 1939 (Mysore Act 16 of 1939) which was in force in the area of what is generally known as the former State of Mysore; and, the Coorg Agricultural Produce Markets Act, 1956 (Coorg Act 7 of 1956) which was in force in the district of Coorg.

3. The Mysore Agricultural Produce Marketing (Regulation) Act, 1966, which will be referred to in the course of this judgment as the new Act, repealed all the six laws which were operating variously in the different areas to which we have already referred.

4. In these writ petitions, the constitutionality of quite a few provisions in the new Act is

questioned. Those provisions are: Sections 2(1)(iii), 10, 11, 16(1) (a), 41, 65, 66, 67, 72, 75, 76, 78, 85 and 86. Among the rules made under the new Act in the exercise of the rule making power created by Section 146 of that Act, the only rule, the constitutionality of which was assailed, in the argument is Rule 76(1). In some cases, the validity of all the bye-laws made by some of the market committees was questioned, and in other cases, only some of the bye-laws made by those committees. It is not necessary to make an enumeration of those bye-laws in this part of the judgment since, to the arguments concerning those bye-laws we shall advert at the appropriate stage. In addition, the argument was maintained that quite apart from the constitutionality of Section 65 which authorizes the levy of market fee by the market committee, the market committees could not, in the case of the petitioners before us, demand any market fee which could be imposed under the new Act since the stage at which such market fee could be demanded had not come into being under the provisions of the new Act.

5. Before proceeding to discuss the constitutionality of the various provisions to which we have referred or the validity or otherwise of the bye-laws and Rule 76(1), it would be convenient to discuss the argument maintained before us that none of the market committees which are parties to these writ petitions could demand from the petitioners before us any market fee under the new Act. It is indisputable that if the market fee authorized by Section 65 of the new Act cannot be demanded, what could be demanded is the market fee payable under the repealed enactment since, the operation to that extent of the repealed enactments is preserved by Section 154 of the new Act which is the saving section.

6. The main ground on which it was contended before us that no market fee under the new Act could be demanded was that the condition precedent to the demand of that market fee, the existence of which is made indispensable by Sections 3, 4 and 6, does not exist in the cases before us although a contention was raised to the contrary by some of the Advocates before us. Those sections read:

> "3. Notification of intention of regulating the marketing of specified agricultural produce in specified area:
> (1) The State Government may, by notification declare its intention of regulating the marketing of such agricultural produce in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.
> (2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days will be considered by the State Government.

4. Declaration of market area and of regulation of marketing of specified agricultural produce therein: After the expiry of the period specified in the notification issued under Section 3, and after considering such objections and suggestions as may be received before such expiry, the State Government may, by another notification, declare the area specified in the notification issued under Section 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued under Section 3 shall be regulated under this Act in such market area. A notification under this section may also be

published in Kannada in a newspaper circulating in such area.

6. Markets, market yards, market sub-yards, sub-markets, and sub-market yards:

(1) (a) For every market area:-
(i) there shall be a market and
(ii) there may be one or more sub-markets;
(b) For every market:-
(i) there shall be a market yard, and
(ii) there may be one or more market sub-yards.
(c) For every sub-market there shall be a sub-market yard.
(2) (a) The Chief Marketing Officer shall, as soon as possible after the issue of a notification

under Section 4, by a notification, declare any specified area in the market area to be a market. He may also by the same notification or by any subsequent notification declare any other specified area in the market area to be a sub-market.

(b) The Chief Marketing Officer shall by a notification under clause (a) also declare a specified place (including any structure, enclosure, open place or locality) in the market to be a market yard for the regulated marketing of the notified agricultural produce specified in the notification. He may also by the same notification or by any subsequent notification or notifications declare any other specified area or areas, as the case may be, (including any structures, enclosures, open place or locality) in the market to be a market sub-yard or sub-yards for the regulated marketing of the notified agricultural produce specified in the notification."

Section 65 reads:

"65. Levy of market fees
(1) The market committee shall levy and collect market fees from the buyer in respect of agricultural produce brought by,- (i) any trader or other person in the yard; and (ii) any trader outside the market or sub-market in the market area.

At such rate as may be specified in the bye-laws (which shall not be more than thirty paise per one hundred rupees of the price of the agricultural produce) in such manner and at such times as may be specified in the bye-laws.

(2) For purposes of sub-section (1), all notified agricultural produce leaving a yard shall, unless the contrary is proved, be presumed to have been brought within such yard by the person in possession of such produce."

The scheme of these four sections which we have set out makes it clear that before it could be

said that the market committee could levy or collect the market fee under the 65th Section, there should at least be a market area, a market and a market-yard. Among these areas, the market area is the biggest, the market is the next biggest and the market-yard is the smallest. Section 6 makes it clear that for every market area, there shall be a market, and that, for every market, there shall be a market-yard. So, that for the purpose of Section 65, there should be a market area, a market and a market-yard whether or not there are sub-markets or market sub-yards or sub-market yards, is plain, and, that that is so was not disputed by Mr. Advocate General appearing for the State and by the Advocates appearing for the fifteen marketing committees which are before us. In the pleadings before us, no one disputes that there is no market area or the market. The limited ground on which an argument is constructed that no market fee could be demanded under Section 65 is that there was and has been no market-yard such as the one to which Section 6 refers. This is the state in which we find the pleadings in the cases before us although at one stage during the argument of Mr. Srinivasan appearing for the petitioners in Writ Petition Nos. 2471/68 and 2472/68 did make an endeavour to raise a contention that there was no valid notification under which any market was established under the provisions of the repealed Mysore Act. But, it was pointed out to him that he was precluded by raising any such contention since there was an admission in the affidavits produced along with the writ petitions that the markets such as what had to be established under the repealed Mysore Act had been established.

7. The importance of the absence of an allegation or a plea that there was no market area or a market under the repealed enactments consists of the fact that if the provisions of proviso (a) to Section 154(1) of the new Act are applicable, the establishment of a market area and a market or even a market yard, as the case may be, which came into being under the repealed enactments should be deemed to be the market area, market and market yard which may be established or declared or notified under the new Act. They could be so deemed to have been established only if the legal fiction which is created by that proviso is not inconsistent with the provisions of the new Act.

8. We should mention here that it is not controverted that the repealed Hyderabad Act, the Bombay Act and the Mysore Act did contain provisions for the establishment of areas corresponding to the market area, the market and the market-yards to which Section 6 of the new Act refers. It is equally clear that the repealed Madras Act contained provisions for the establishment of areas corresponding to the market area and the market of the new Act although it contained no provisions for the establishment of a market-yard such as the one to which the new Act refers.

9. The notified area of which Sections 3 and 4 of the repealed Madras Act speak corresponds to the market area of the new Act, and, the market to which Section 4-A (2) refers corresponds to the market of the new Act. Similarly, the market of which Section 3 of the Hyderabad Act speaks is the market are a of the new Act, and, the rules made under that Act contain provisions for the establishment of the areas corresponding to the market and the market-yard of the new Act; Rule 2(c) referred to the market to which Section 3 of that Act referred which is the same as the market area of the new Act; Rule 2(d) authorized market-yards for the sale and purchase of cotton, and, Rule 2(e) for the sale and purchase of grain; and Rule 2(f) authorized the establishment of a market proper which corresponds to the market of the new Act.

10. There were similar provisions in the repealed Bombay Act as it stood at the relevant point of

time and they are Sections 4 and 4-A. It is undisputed that the market area to which Section 4 refers is the market area of the new Act, and that, the market and the market-yard to which Section 4-A refers correspond respectively market and the market-yard of the new Act.

11. The corresponding provision in the repealed Mysore Act is Section 4. The notified area to which the definition in Section 3(d) refers is, it is undisputed, what corresponds to the market area of the new Act, and that the notified area is what had to be notified by a notification under Section 4(2) of that Act Section 4(1) also refers to a market the limits of which had to be defined under sub-section (2), and, again it is clear that the market to which those parts of Section 4 refer is what corresponds to the market of the new Act.

12. We do not accept the argument advanced by Mr. Srinivasan that the market to which Section 4(1) of the repealed Mysore Act refers, is the same as the notified area to which sub-section (2) refers and the reasons why we say so are firstly that the market and the notified area are defined separately by Section 3. Clause (b) of Section 3 says that a market means a market established under Section 4 and clause (d) which defines the notified area reads:

> "(d) "Notified area" means an area notified under Section 4."

Section 4 reads:

> "4(1) The State Government may, after consulting the district board and such other local authorities as they deem necessary or upon a representation made by such local authorities, by notification in the official gazette, declare that any place shall be a market established under this Act for any agricultural produce.
> (2) Every such notification shall define the limits of the markets so established, and may, for the purposes of this Act, include within such limits such local area as the State Government may prescribe."

One thing which is clear from Section 4 is that market is a place within well-defined boundaries which have to be set out in the notification under sub-section (2). Similarly, a notified area is another place which is distinct from the area which constitutes the market, and so, the argument that the 'market' and the notified area' have reference to the same area, cannot be sound. If they are two different areas, one should be the area which corresponds to the market area of the new Act and the other is obviously what corresponds to the area of the market of that Act and so, the question arises whether the notified area is the market area, or, the market to which Section 4(1) refers is the market, and, since Mr. Srinivasan does not dispute that the notified area is the market area, the market must necessarily be the market of the new Act. That we can reach that conclusion by that process is what resolves a complication created by the somewhat inartistic language in which sub-section (2) of Section 4 of the repealed Mysore Act is worded. If that sub-section is literally understood, it may prima facie mean that the market is the bigger area and that the notified area is the smaller area, especially for the reason that that sub-section says that the notified area "may include" within the limits of the market area.

13. It is, however, not necessary for us to discuss the import of the word "include" occurring in

sub-section (2) of Section 4 of the repealed Mysore Act since both Mr. Advocate General and Mr. Srinivasan asked us to say that the notified area is the market area. That they are right in making that submission is clear from paragraph 2 to Section 5 of the repealed Mysore Act which says that the provisions of the Act and the other statutory provisions which will be made under it shall be applied by the market committee in the notified area, and the clear meaning of that paragraph is that the notified area is the bigger area and that the market is the smaller area, else, neither the Act nor the bye-laws and the rules would operate in the market and a construction resulting in such consequence cannot be sound.

14. But, considerable argument was expended over the question whether the Mysore Act contains a provision for the establishment of a market-yard. Mr. Srinivasan pointed out to us that the expression "market-yard" did not occur in any part of the Act and that it occurred for the first time only in Rule 4 and his submission was that Rule 4 of the rules made under the repealed Mysore Act was beyond the competence of the State Government which under Section 6 of that Act was the repository of the power to make rules for purposes set out in that Section. Rule 4 as it stood amended defined a market-yard as an area which was part of the market declared by notification under Section 4. And, it was maintained by Mr. Srinivasan that Section 6 did not authorize the rule by which a market yard could thus be brought into being.

15. But, it seems to us that although the Act did not speak in clear language about a market-yard, the clear intendment of the Act was that there should be one. Section 17 of the Act contained a provision that there should be no private market inside the limits of a declared market or within such distance from the market as may be notified in official gazette, and the explanation to that Section which was in the nature of an exception to Section 17 stated that a person who sold his own agricultural produce "outside the premises" set apart by the Market Committee for purposes of purchase and sale of agricultural produce shall not be deemed to establish a private market in contravention of the provisions of Section 17. It is abundantly clear that the premises set apart by the market committee "for purposes of purchase and sale of agricultural produce" to which that explanation refers is no other than the premises which can be declared as a market yard.

16. Section 6 authorizes Government to make rules for purposes of management and regulation of markets under the Act and Sections 5, 6 and 7 contain provisions for the management of the market, the issue of licenses to many classes of persons including warehousemen and the specification of place at which the agricultural produce shall be weighed and measured and the like. Since the functioning of a market committee under the provisions of the repealed Mysore Act for purposes set out in that Act could not be performed satisfactorily or in accordance with the purposes of the scheme and the Act unless there was a market-yard in which the market committee could make available facilities such as godowns, warehouses, canteens and the like, it is not possible for Mr. Srinivasan to ask us to say that the constitution of a market-yard to which Rule 4 refers was not authorized by the Act and that therefore we should denounce that rule as one made without competence.

17. It will be seen from the discussion so far made that except under the repealed Madras Act which provided only for the establishment of areas corresponding to the market area and the market of the new Act, the remaining four laws contained provisions under which, areas which correspond to the market area, the market and the market-yard of the new Act could be established.

18. It will be recalled that in the affidavits produced in these writ petitions, there is no pleading that areas corresponding to the market area and the market had not been established under the repealed enactments. The only controversy which the pleadings before us raise is one which pertains to the question whether market yards had also been established under the repealed enactments. So, the two questions which we should proceed to consider are firstly whether the areas established under the repealed enactments which correspond to the market area and the market of the new Act, could, under the proviso (a) to Section 154(1) of the new Act, be deemed to have been established under the corresponding provisions of the new Act, and secondly whether market-yards had also been established under any of the repealed enactments and whether those market yards could also be regarded as market yards established under the new Act.

19. We are of the opinion that the market areas and the markets established under the repealed enactments, although they were called by different names by those enactments, should be deemed to be market areas and the markets established under the new Act. Such, in our opinion, is the clear effect of clause (a) of the proviso to Section 154(1) of the new Act.

20. We do not accede to the argument that there is any element of inconsistency in the provisions of the new Act which can preclude the conclusion which we have reached. The only submission made to us in support of the argument that an element of inconsistency existed was that while the market of the new Act could be declared only by the Chief Marketing Officer under Section 6 of that Act, the market under the repealed Madras Act could be established only by the marketing committee, and under the other repealed laws, only under a notification by the State Government, and that, that is the inconsistent feature of the new Act which does not save the old markets.

21. We can say that the provisions of the new Act are inconsistent with the legal fiction which is enjoined by clause (a) only if we find it possible to say that what was done under the old Act was not possible under the new Act by reason of the provisions of the one being inconsistent with the provisions of the other. But, if on the contrary a notification which could be made under the new Act declaring an area to be a market could also be made under the repealed enactments whoever may be the repository of the power to make that notification, and mere fact that the two designated authorities who could make the notifications are not identical, does not introduce the element of inconsistency. The element of inconsistency would exist only if there are provisions in the new Act which make the notification similar to a notification under the repealed enactment impossible under its provisions. But, if on the contrary the notification under the repealed enactments whoever could make it, is also possible under the new Act the provisions of Clause (a) become manifestly applicable there being no inconsistency such as the one to which it refers.

22. That being the true position, we should, in our opinion, say that the market areas and the markets which came into being under the repealed enactments should be deemed to have been declared under Sections 4 and 6 of the new Act respectively and that they are the market areas and the markets for the purposes of the new Act.

23. But, the market committees functioning under the new Act could demand the market fee to which Section 65 refers only if in addition to the market area and the market there was also a market-yard the establishment of which is made imperative by Section 6 of the new Act. The fee

which could be imposed and collected under that Section is a fee for services rendered by the market committee to the person from whom it could be claimed, and that that is so is also the case of the State Government and the market committees which are before us. It is also not controverted that the services in respect of which that fee could be demanded are rendered not only in the market area and the market but also in the market yard although for the petitioners the contention is that no service is rendered in the area outside the market.

24. However that may be, the imposition or recovery of a fee under Section 65 must be preceded by the bringing into existence of a market yard in which some of the services to which the Act refers have to be rendered by the market committee. If, therefore, there was no market-yard in existence when the market committees demanded the fee, the liability to pay which is repudiated by the petitioners before us, it is obvious that the fee was not exigible.

25. Mr. Advocate General and the Advocates appearing for the market committees did not controvert the correctness of this position. So, it becomes material to enquire whether market-yards were also in existence at the relevant point of time. They would be in existence if they had been created or established under the repealed enactments, for, in that event, they should be deemed to be market-yards established under the new Act as provided by Section 154.

26. But, it is admitted by the Advocate General on behalf of the State and by the Advocates appearing for the market committees before us that among the areas with which we are concerned, market-yards had been established under the repealed enactments only in eight areas which were under the control of the agricultural market committees of Nippani in the district of Belgaum, the city of Mysore in the district of Mysore, Kumta and Sirsi in the district of North Kanara, Yadgir in the district of Raichur and Raichur and Dharwar. It is also admitted that by the decision rendered by this Court in *Nagaiah Shetty v. Market Committee*[1], the notification by which a market yard was established in Raichur was struck down and that the notification

[1](1965) 1 Mys LJ 766

relating to Yadgir was similarly declared invalid in *Bindraj Surajmal v. State of Mysore*[2], It is also not disputed that in writ petitions Nos. 634 and 635 of 1965, this court made the pronouncement that the market-yard in Belgaum had not been properly established. The validity of the notification relating to the market-yard in Nippani is under impeachment in this court in writ petition No. 699 of 1966 and also in a second appeal. The resultant position, therefore, is that when the new Act came into force, there were no market-yards in Raichur, Yadgir and Belgaum since the notifications under which they were established were declared invalid. The question whether there was a market-yard in Nippani would depend upon the pronouncement of this Court in the writ petition and in the second appeal to which we have referred.

27. So, the market-yards which were established in the city of Mysore, in Kumta, Dharwar and Sirsi must be deemed to be market-yards established under the provisions of the new Act, and so, the challenge made with respect to the market fee demanded in these four areas cannot succeed on the ground that there was no market yard in those areas such as the one to which Section 6 of the new Act refers.

28. It is stated before us by Mr. Advocate General who has produced before us the relevant notifications that in the areas in which there were no market-yards under the repealed enactments, market-yards have been since established during the pendency of these writ petitions

under Section 6 of the new Act on December 7, 1968 except in the area of Hospet in which the relevant notification is dated December 16/19, 1968. So, in those cases in which there were no market yards under the repealed enactments the market fee could be demanded only from the date on which it became due after the establishment of the market yards, and not for any antecedent period under the new Act. The market fee which could be demanded with respect to those areas is the market fee which was exigible under the old Act the operation of which with respect to that matter was saved by clause (a) of the proviso to Section 154 (1) of the new Act. That proviso says that the fee levied under the old Act must be deemed to be the fee levied under the new Act unless and until superseded by anything done under the new Act and unless it is inconsistent with the provisions of the new Act. So unless the market fee under the old Act is superseded by the imposition of a market fee or by anything done under the new Act, that fee could be recovered only if its exigibility is not inconsistent with the provisions of the new Act, and, on the question whether there is any inconsistency such as the one to which clause (a) of the proviso refers, we abstain from making any pronouncement in these cases. The areas in which that situation obtains are: (a) the whole of the Bellary district, (b) the areas under the control of the Marketing Committee of Raichur and Yadgir, (c) the areas under the control of the Marketing Committee of Belgaum, and (d) the areas under the control of the Marketing Committees in Shimoga, Sagar, Bangalore, Nanjangud, Mulbagal and Madhugiri.

29. But, with respect to the areas under the control of the Marketing Committees of the City of Mysore, Kumta, Dharwar and Sirsi, the demand for the payment of the market fee cannot fail on the unavailable ground that no market-yards had been established in those areas under the repealed enactments. Since with respect to those areas, the only argument presented before us is that there were no market yards in

[2](1968) 2 Mys LJ 57

those areas and there is no challenge to the bye-laws made by the concerned market committees under which the imposition of market fee was made and there is no prayer that we should quash those bye-laws, the challenge to the impugned demand in those areas must be negatived.

30. With respect to Nippani, the question whether the market-yard was or was not established under the repealed Bombay laws is for adjudication in Writ Petition No. 699 of 1966. So, the question whether the market fee under the new Act can be demanded in that area by the market committee has to be decided in that case and we say nothing about it in these writ petitions.

31. Our conclusion that the market fee under the new Act cannot be recovered in the areas in which no market yards have been established under the repealed enactments is restricted only to the period antecedent to the date on which after the establishment of market-yards in those areas under the new Act on December 7, 1968, and in the case of Hospet on December 16/19, 1968, the new market fee becomes properly exigible.

32. We are asked by the petitioners who carry on trading operations in those areas to say that on the question whether the notifications by which market-yards are established under the new Act are not in accordance with law, liberty should be reserved for them to agitate that matter if they so desire since those notifications were made during the pendency of these writ petitions. On the validity of these notifications, we say nothing in these writ petitions since that question was not and could not be discussed in the matters before us.

33. The discussion so far made takes us to the consideration of the question whether the

provisions in the new Act such as those to which we have referred and the bye-laws and the rules made under them could be declared to be either unconstitutional or invalid. It would be convenient, in the context of the discussion already made, to investigate, in the first instance, the sustainability of the argument with respect to Section 65 of the new Act which we have already extracted. The argument constructed on the language of this Section was that although under the provisions of the Act the market committee is under a duty to render service both to the buyer and to the producer as also to the commission agent, the imposition of liability to pay the fee on the byer to the exclusion of the other two categories of persons to whom services are rendered is unsustainable and invites the reproach that it makes a hostile discrimination against the buyer. It is common ground that the fee of which this Section speaks is a fee for services rendered by the market committee, and it is obvious that a fee could be demanded by the market committee only if it rendered those services between which and the fee there is necessary correlation. The argument which was advanced at one stage by Mr. Srinivasan was that the fee to which Section 65 refers is not really a fee but a tax which could be recovered again and again on the occasion of each sale inside the yard and outside the market. The postulate placed before us was that an impost which could be recovered on a plurality of occasions with respect to the same agricultural produce in that way cannot conform to the description of a fee but can only be a tax. On the question whether Section 65 authorizes the recovery of a fee at a plurality of points with respect to the same agricultural produce, the Advocates appearing for the market Committees are not themselves in agreement although Mr. Advocate General appearing for the State asks us to place the interpretation that the fee could be recovered again and again on the occasion of each sale. Considerable argument was expended on both sides over the question as to whether any service was rendered to the successive purchasers either inside the yard or outside the market such as would enable the Market Committee to make successive claims for the payment of the fee. But, the question whether Section 65 does authorise a fee at more than one point should depend on the construction which we should place on its language having regard to the scheme and the purpose of the Act.

34. When we proceed to understand the provisions of that section in that way, it would be observed that that section does not authorize the recovery of a fee from every buyer in the areas to which it refers but empowers the levy of the fee and its collection "from the buyer in respect of agricultural produce". Although at one stage an argument was constructed in support of the plurality of the impost on the words "at such times as may be specified in the bye-laws" with which sub-section (1) of this section concludes, it is clear that those words do not authorize a plurality of the levy but only speak, as rightly submitted by Mr. Advocate General, of the intervals or the points of time at which the fee which is properly recoverable could be collected. We have no doubt in our mind that those words speak of the collection at the point of time at which these collections could be made. Under that part of the sub-section, the market committee has no more power than to state at what intervals or at what points of time the fee which is properly recoverable could be collected.

35. On a careful consideration of the matter we lean to the conclusion that the purchase in respect of which the fee could be levied or collected is the earliest purchase of the agricultural produce belonging to the producer. It will be seen from the provisions of the Act that the producer who brings his agricultural produce into the market could sell it only inside the yard and it is this sale which he must needs make inside the yard when he brings his produce inside the market. That, is the topic of the impost to which Section 65 refers. It would be unreasonable to place upon

statutory provision like Section 65 which provides for the levy of a fee, the construction that every buyer who purchases agricultural produce either inside the yard or outside the market could be made liable to pay the fee, in the absence of words in that section which justify that construction. In the absence of express provision that the fee would be recovered again and again, we must lean to the construction that it could be recovered only once, and, if that construction is correct, it must necessarily follow that the occasion on which the fee could be collected is the occasion when there is a sale by the producer inside the yard or outside the market. The power to levy the fee gets exhausted when the agricultural produce has been sold by the producer to a trader or other person and when the fee has been levied on the purchase so made, there is no more power in the market committee to demand the fee repeatedly from each purchaser thereafter.

36. The language of Section 65 of the new Act is remarkably similar to the language of Section 11(1) of the repealed Madras Act and Section 11 of the repealed Bombay Act. Section 11 (1) of the Madras Act reads:

> "11(1) The Market Committee shall subject to such rules as may be made in this behalf, levy fees on any commercial crop or produce brought and sold in the notified area at such rates as it may determine."

Section 11 of the Bombay Act reads:

> "11. The market committee may subject to the provisions of rules subject to such maxima as may be prescribed levy fees on the agricultural produce brought and sold by licensees in the market area."

Neither the Madras Act nor the Bombay Act stated that the fee could be levied only on the first purchase and not on the purchases made from the purchaser who had already purchased the agricultural produce from the producer. But, it is admitted by Mr. Achar appearing for the market committee of the Bellary district and Messrs. Ramachandra Rao and Mandagi appearing for the market committees of the old Bombay area that under the Bombay and Madras Acts, the market committees were collecting the market fee only once when there was a sale of an agricultural produce by the grower to the trader or some other person, and that the subsequent transaction by the purchasers who made such purchases to others were not subject to any market fee. When there is, as we have already observed, striking resemblance of the language of Section 65 of the new Act and that of Section 11 (1) of the Madras Act and Section 11 of the Bombay Act in the sense that none of these three sections in express language authorises a plurality of the market fee with respect to the same agricultural produce and if in the administration of the Madras and Bombay Acts the corresponding provisions were understood to mean that the market fee could be recovered only once and the legislature employed similar phraseology in enacting Section 65, it would be reasonable for us to say that the legislative intent in enacting Section 65 of the new Act was to create an impost which was similar to the impost created by the relevant sections of the Madras and Bombay Acts.

37. The view that we take receives support from the decision of the Supreme Court in *Krishna Coconut Co. v. E. G. C. and T. M. Committee*[3], in which there was a discussion of the provisions of Section 11(1) of the repealed Madras Act. The pronouncement of the Supreme Court makes it

clear that that section authorised the recovery of the market fee only when there was a sale of the agricultural produce by the producer and not when there were subsequent sales. In the context of that discussion Shelat, J., said this:

> "The Legislature had thus principally the producer in mind who should have a proper market where he can bring his goods for sale and where he can secure a fair deal and fair price. The Act thus aims at transactions which such a producer would enter into with those who buy from him. The words "brought and sold" used in Section 11 (1) aim at those transactions whereunder a dealer buys from a producer who brings to the market his goods for sale." There is no reason why we should not understand the words of Section 65 in the same way in which they were explained by the Supreme Court since the purpose of the new Act is the same as the purpose of the Madras Act and there is a great s

[3] AIR 1967 SC 973

> imilitude between the language of Section 11 (1) and that of Section 65. It would be unreasonable for us to make a departure from the enunciation made by the Supreme Court in that situation when we interpret Section 65 of the new Act. That enunciation receives further support from another part of the judgment of the Supreme Court in which Shelat, J., said:
> "If the fee was levied on sales effected by the appellants with their customers its levy would not be valid under Section 11 (1) and would also be repugnant to Article 286 where goods were delivered outside the State."

38. The conclusion which emerges from this discussion is that under Section 65 the levy of the market fee is on the first sale by the producer inside the yard or outside the market as the case may be to a trader or any other person and that once the agricultural produce has been sold in that manner no market fee could be recovered from a buyer who buys the agricultural produce subsequently. This conclusion negatives the argument advanced on behalf of the petitioners and also maintained by Mr. Advocate General and on behalf of some of the market committees before us.

39. It will be recalled that the contention advanced for the petitioners that the market fee was recoverable under its provisions from every buyer who purchases the agricultural produce either in the yard or outside the market had for its purpose the denunciation of Section 65 on the ground that the impost is really a tax and not a fee. But no one disputes that if the fee is payable only once and on the first purchase such as the one to which we have referred, the character of the impost is that of a fee and not that of a tax. If the impost is a fee and the levy is on the first purchase of the agricultural produce, it is difficult to understand how it could be contended that Section 65 is for any reason unconstitutional. We do not accept the postulate that that section authorizes a levy of a fee from the buyer for services rendered to the buyer and others in circumstances in which that fee is recoverable only from the persons to whom services are rendered.

40. It is not necessary for us to investigate the question whether in a given case where services are rendered to two groups of persons the fee could be recovered only from one group to the

exclusion of the other. If Section 65 says that the market fee could be recovered from the buyer, it means that that fee which could be recovered from the buyer under its provisions is the fee properly recoverable from him haying regard to the measure of the services rendered by the market committee to him and the correlation between those services and the fee which he is called upon to pay.

41. We do not accept the interpretation which was suggested to us that Section 65 authorizes the market committee to recover from the buyer a fee which can be recovered from someone else or that the market committee could under its provisions render services to someone else but recover the fee from the buyer even if it does not render services to him. The petitioners cannot ask us to suggest an interpretation which introduces into the levy an element of illegality although the language of the section does not so introduce it, and then ask us to quash the statutory provision on the ground that it authorizes an illegality. It is only in a case in which the statutory provision empowers an illegal levy that we could strike it down. But if it does not, we should not by stretching and straining its language so interpret it that it bestows power to do something illegal and declare the provision to be invalid on that ground.

42. But it was contended that even so, the legislative power to make a legislation authorizing the recovery of the market fee resided in Parliament and not in the Legislature of the State. Dependence was placed in support of this contention on entries 92-A and 96 of the Union List and we were asked to say that since in a case where an Inter-State sale takes place of agricultural produce, the imposition of a market fee with respect to such inter-State sale would relate to a topic in respect of taxes on the sale or purchase of goods in the case of inter-State trade or commerce within the meaning of entry 92-A of the Union List, a fee in respect of the matter which is within entry 92-A, as stated in entry 96, could be authorized by legislation made by Parliament and not by the State.

43. But the answer to this submission is that the pith and substance of the topic of the subject matter of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966, is what falls within entries 26 and 28 of the State List. Entry 26 relates to trade and commerce within the State and entry 28 speaks of markets and fairs. It may be that a legislation made within the field of these legislative entries with respect to trade and commerce within the State and to markets and fairs may also provide for the imposition of a market fee. But if the legislation is otherwise within the field of entries 26 and 28, that part of the legislation which authorizes the imposition of a fee with respect to sales made in the course of inter-State trade and commerce would only be incidental to the main legislation, and so within the competence of the State Legislature. And since entry 65 of the State List authorizes a legislation in respect of fees in respect of all the matters in the State List, a fee with respect to matters set out in items 26 and 28 could be authorized by a legislation made by the State. The argument to the contrary does not receive any support from the decision of the Supreme Court in AIR 1967 SC 973 in which the restricted enunciation made was that the interpretation which was sought to be placed on Section 11 of the Madras Act that the market fee authorized could be recovered from every successive buyer if accepted would amount to a contravention of the provisions of Article 286 of the Constitution.

44. The last submission which could be noticed by us in the context of the present discussion is that there was an impermissible delegation by the Legislature of the power to fix the market fee recoverable under the Section since the Legislature had specified only the maximum fee that

could be recovered. It is clear that there is no substance in this criticism since the delegation is not open to the reproach that it is a delegation of power with respect to any essential legislative function.

45. Before concluding this branch of the discussion, we should observe that we do not in the course of this judgment embark upon a discussion of the question whether, as contended for the petitioners any services are rendered by the market committee outside the area of the market and in the remaining area of the market area. That is a question which can properly arise for adjudication only in a proper case in which both parties produce the necessary materials in the context of a demand which is challenged.

46. We now proceed to discuss the other provisions in the new Act with respect to each of which the argument advanced was that it was unconstitutional and therefore invalid. It was submitted to us that the first provision which was so assailed was the definition in Section 2 (1) (iii) of the new Act which defines 'Agricultural Produce'. It was said that since this definition authorized the State Government by notification to declare a produce not enumerated in the definition as agricultural produce for the purposes of the new Act, there was unauthorized delegation of legislative power. It is clear that there is no substance in this argument since, as explained by the Supreme Court in *Mohd. Hussain v. State of Bombay*[4], such delegation is not beyond the bounds of permissive delegation.

47. The next fascicle of Sections is what comprises Sections 10, 11, 16 (1) (a) and 41. Section 10 which prescribes the composition of the first market committee states that seven members of the committee out of fifteen shall be agriculturists and that there shall be two traders and one commission agent and so on. It was said that excessive representation was made available to the agriculturists.

48. But, in our opinion, the argument overlooks the purpose of the new Act which is to protect the interests of the agriculturists against exploitation by a middleman and others, and it is indisputable that in any given area the strength of the agriculturists cannot but be commensurate with the proportion which Section 10 incorporates.

49. Section 11, it was said, contained an objectionable fourth proviso which says that if persons of the categories specified in any category of clauses (ii) to (vii) are not available, the committee shall consist only of persons of the category available. This proviso is similar to the first proviso to Section 10 (1) and it is difficult to understand how any one can quarrel with these provisos. If a member belonging to any particular category is unavailable, how any one could suggest that persons belonging to the available categories should not take their place, is not easy to comprehend. Section 16 (1) (a) speaks of a disqualification and says an agriculturist who is a partner or a Director of a firm or a body corporate, or a member of a joint family which does business as a trader, commission agent or broker, shall not be qualified to be a representative of the agriculturists. The purpose of this disqualification is to prevent the betrayal of the interests of agriculturists by a person who although he is himself an agriculturist has also an interest in the activity of the traders, commission agents or brokers. Moreover, a provision creating a disqualification to function on a statutory body like the market committee is fully within the competence of the Legislature and the restriction such as the one which Section 16 (1) (a) incorporates is in our opinion unexceptionable.

50. Section 41 which provides that every Chairman and Vice-Chairman of the market committee shall be an agriculturist, does not, in our opinion, invite any reproach since its purpose is that the two important offices of the market committee should be filled only by agriculturists the protection of whose interests is the primary and dominant purpose of the new Act.

51. The criticism leveled against Section 66 that it authorizes the market committee

[4] AIR 1962 SC 97

to insist on the production of accounts and confers power of entry, inspection and seizure, appears to us to be groundless. The power exercisable under this Section is confined to an officer or a servant of the committee empowered by the State Government and the power to make a seizure or an entry could be exercised only when he has reason to suspect the evasion of the provisions of the Act.

52. Section 67 authorizes an officer or servant of a market committee empowered in that behalf by the State Government to stop a vehicle or other conveyance and keep it stationary so that its contents could be examined.

53. The purpose of Sections 66 and 67 is the enforcement of the new Act and since the power is confided to a nominee of the State Government and the power could be exercised as the statutory provisions themselves indicate, only in a proper case, it cannot be said that there is entrustment of unguided and uncanalised power without the prescription of any standard.

54. Sections 72 and 75 are subject to some criticism in some of the affidavits of the writ petitions. But, no one presented any argument in support of that challenge, and so it is not necessary for us to discuss that matter.

55. The next Section to which we should advert is Section 76 which directs the sale of agricultural produce in one of the many manners specified in that Section. That Section states that the sale shall take the pattern of a tender system or a public auction or by open agreement or by sample or by reference to a known standard or in such other manner as may from time to time be directed by the market committee with the previous approval of the Chief Marketing Officer. It does not appear to us that the provision of this Section can be subjected to any reasonable criticism since the enforcement of the provisions of the new Act is possible only if the manner of the sale of agricultural produce is also regulated in manner provided by this Section. The sales by tender system or by public auction or by open agreement or by the other methods specified in that section are the methods by which the sales generally take place, and when they take place in that way the parties will have the opportunity to offer their bids freely and in that event the producer could always expect to secure for his agricultural produce a reasonable price. It is clear that the principal purpose of this section is to stop sales which are ordinarily described as under-cover sales so that a sale conducted in a clandestine and secret manner which operates to the prejudice of the agriculturists, is made impossible.

56. But it was said that while it may be possible for the legislature to control in that way a sale by a producer, it was unmeaning for the legislature to introduce a legislative provision for the regulation of sales thereafter at stages where the protection of the interests of the producer is no longer necessary or possible.

57. But since the purpose of the new Act is to regulate the sales of agricultural produce throughout the area over which the market committee exercises its control, the regulation of even subsequent sales is what can prevent circumvention or evasion of the provisions of the new Act so that sale which is really a sale between the producer and the buyer does not masquerade as a sale between a trader and a trader.
58. We now proceed to discuss Section 78 about which there was considerable debate during the argument. That Section prescribes the maximum commission payable to a commission agent and says that it shall be the duty of the commission agent to pay storage charges and insurance charges without adding those charges to the commission fixed by the market committee.

59. The argument advanced before us was that the prescription of a maxium one and a half per cent commission which, shall include the insurance and storage charges payable by the commission agent is an invasion of the fundamental right guaranteed by Article 19 of the Constitution to carry on a business, trade or profession as a commission agent and that the prescription of such a low commission as one and half per cent of the price with the liability to pay storage charges and insurance charges can have no other consequence than the elimination of the commission agent and the complete paralysation of his activity in the profession of a commission agent. It was submitted to us that the imposition of the condition that storage charges and insurance charges shall be payable by the commission agent is an unreasonable restriction not falling within Clause (6) of Article 19, and that the prescription of the maximum commission in that way overlooks the possibility of a commission agent in a given case, being fastened with the liability to pay excessive storage and insurance charges if he is to keep the goods entrusted to his custody by the producer for a longer time than the period during which another commission agent is constrained to keep them. Mr. Rama Jois appearing for one of the petitioners produced before us a statement of accounts in that context, and, according to him, a commission agent whose business turnover is of the magnitude of five lakhs would not get a commission exceeding ₹ 1,000 during the whole year.

60. But it should be remembered that the primary purpose of the new Act is to regulate the activity of the marketing of the agricultural produce in such a way that there should be no exploitation of the producer through the instrumentality of middlemen such as commission agents and others.

61. A commission agent is defined by Section 2(8) of the new Act which says that a commission agent is a person who on behalf of his principal and in consideration of a commission keeps the goods of his principal in his custody and sells the same making himself liable to the seller for their price. Those services which are rendered by a commission agent are the usual services rendered by one like him, and while the nature of the services rendered by a commission agent are of the same quality and have the attributes as those which used to be rendered quite a long time ago when the price of agricultural produce was exceedingly low, it is in the knowledge of every one that during recent times there has been a remarkable rise in the price of agricultural commodities and it is that phenomenon which now earns for a commission agent for the same services which he used to render when the market with respect to agricultural produce was in an extremely depressed condition, a correspondingly large commission which is attributable exclusively to the rapid and enormous increase in the price of agricultural produce. It is that condition of the market concerning agricultural produce which makes it possible for the

commission agent to secure for himself a large commission than he could have hoped to get at antecedent periods of time, and we should hesitate to say that in that situation a commission of one and a half per cent which is what Section 78 fixes can be said to be unreasonable notwithstanding the fact that such commission includes storage and insurance charges.

62. No one has placed before us any material as to what those insurance and storage charges amount to, save in the affidavit produced on behalf of the State by Mr. Advocate General in which it is stated that the aggregate of the insurance and storage charges does not exceed 5 paise per cent of the price. If what is stated in that affidavit is accepted, it should follow that the percentage varies between 2 per cent and 5 per cent so that what remains for the commission agent which he can call his own varies between 1 per cent and 1.3 per cent.

63. But it is really not necessary to depend upon this material which is produced on behalf of the State since on behalf of the petitioners it was contended that the affidavit which incorporates all this information was produced only during the course of argument and at a late stage when the petitioners themselves had no opportunity to produce any material by way of rebuttal.

64. However that may be, the petitioners themselves have produced no materials which might have assisted the investigation of the question as to whether what remains in the hands of the commission agent after he pays the storage and insurance charges was so inconsiderable as to justify the view that the prescription of the commission by Section 78 is unreasonably low.

65. In *Arunachala Nadar v. State of Madras*[5] the Supreme Court explained the purpose of the Madras Act in these words :-

> "Shortly stated, the Act, Rules and the Bye-laws framed thereunder have a long term target of providing a net work of markets wherein facilities for correct weighment are ensured, storage accommodation is provided, and equal powers of bargaining ensured, so that the growers may bring their commercial crops to the market and sell them at reasonable prices. Till such markets are established, the said provisions, by imposing licensing restrictions, enable the buyers and sellers to meet in licensed premises, ensure correct weighment, make available to them reliable market information and provide for them a simple machinery for settlement of disputes. After the markets are built or opened by the marketing committees, within a reasonable radius from the market, as prescribed by the Rules, no license is issued; thereafter all g rowers will have to resort to the market for vending their goods. The result of the implementation of the Act would be to eliminate, as far as possible, the middlemen and to give reasonable facilities for the growers of commercial crops to secure best prices for their commodities." (P. 305)

A similar enunciation was made in *Narendra Kumar v. Union of India*[6], in which the Supreme Court in the context of the question whether the provisions of the Essential Commodities Act imposed an unreasonable restriction observed :

[5] AIR 1959 SC 300

[6] AIR 1960 SC 430

> "It must therefore, be held that clause 3 of the Order even though it results in the

> elimination of the dealer from the trade is a reasonable restriction in the interests of the general public." (P. 437)

66. When the provisions of Section 78 are judged by these standards by which we should assess the reasonableness of these provisions it appears to us that it is impervious to the criticism to which it was subjected.

67. The fact that one commission agent is constrained to keep the goods of his grower in his custody for a longer time than another, and that in consequence the storage and insurance charges in his case are higher, is what is attributable to fortuitous circumstances, and the statement of accounts on which Mr. Rama Jois depended can hardly be of any assistance to his contention since the argument advanced on its basis assumes that all the expenditure shown in that statement was made only over the commission agent's business to which it refers, and that the activity of a commission agent with respect to that turnover extended over the entire period of 12 months. It surely could not have been so. It is also obvious that the turnover relating to areca to which that statement refers although it was to the tune of five lakhs was in respect of a small quantity of areca measuring 600 quintals, and with respect to that transaction even if the commission earned by him was only ₹ 1,000 the petitioner in that case could make no reasonable complaint about it.

68. It was submitted that the imposition by Section 78 on the commission agent, of the liability to pay the value of the goods sold by him whether or not he recovered their price from the buyer, amounted to an unreasonable restriction.

69. We do not agree. Section 78 does no more than to constitute a commission agent a del credere agent, and that he is one is clear from the definition contained in Section 2 (8). It will also be seen from the provisions of Section 85 that the commission agent does not really incur any risk by being fastened with the attributes of a del credere agent.

70. We now go to Sections 85 and 86. Section 85 makes a classification of traders and they are made to fall within four categories. "A" class traders could purchase agricultural produce anywhere in the market area, while the 'B' class traders would do so only in the yard. The area in which the 'C' class traders could make their purchase is the area outside the market and in the market area, while the 'D' class traders are those who make purchases in the market area for a sale to consumers for domestic purposes. Sub-section (2) of Section 85 directs these traders to make deposits or to furnish security or bank guarantee in the various sums enumerated in that sub-section, and this deposit or security is necessary only in the case of a trader who wishes to make a purchase on credit.

71. Mr. Srinivasan who did not contend that the classification made by Section 85 was a reasonable classification, made a restricted submission that the imperfection in the section was that it did not put the trader who purchased goods outside the yard but inside the market, into a distinct classification. It was also contended that the market committee rendered no services outside the yard, and that the imposition of a license fee such as the one prescribed by Section 72 of the new Act is unsupportable.

72. We do not think that the classification made by Section 85 invites any acceptable criticism. It

has made, in our opinion, a reasonable classification of the traders and the deposit of the security to which sub-section (2) refers rests also upon a similar classification. That apart of Section 85 (2) which says that a trader who wishes to purchase goods on Credit must deposit the sum of money referred to by it or furnish security as provided therein, is what, in our opinion protects the interests of the commission agent to whom Section 85 refers.

73. On the question as to whether any services are rendered to any of the traders to which Section 85 refers and particularly to the traders functioning outside the yard, it is not necessary for us to make any investigation in this case in which this question does not arise.

74. We do not think that anything can be said about Section 86 which merely provides that a person functioning as the commission agent shall furnish security or bank guarantee to the extent of Rupees 500. The insistence on such security, it is obvious, is reasonable since the commission agent is liable to pay the producer the value of the goods whether he recovers it from the buyer or not.

75. We see nothing objectionable in the provisions of Section 89 which confers power on the market committee to impose penalties for contravention of the statutory provisions especially since from the decision of the committee, an appeal could be preferred to the Chief Marketing Officer. On the question as to how Section 89 has to work in actual practice, we say nothing in this case.

76. What we have said so far pertains to the challenge made to the provisions of the new Act. In some of the writ petitions, there is a challenge to some of the other provisions of the new Act. But since no argument was presented with respect to that matter by any one, we negative the contentions pertaining to those matters.

77. The only rule the validity of which was assailed in the course of argument is R. 76 (1). That rule reads:

> "No person shall operate in the market area as a trader or commission agent in notified agricultural produce except under and in accordance with a license granted by the committee under this rule."

This rule is, in our opinion, clearly repugnant to proviso (ii) to Section 8 (1) (b). Clause (b) of Section 8 (1) says that no person shall use any place in the market area for the marketing of the notified agricultural produce, or operate in the market area or in any market therein as a trader, commission agent, broker, processer, weighman, warehouseman, or in any other capacity in relation to the marketing of the notified agricultural produce except under a license granted by the market committee. To this prohibition which Clause (b) incorporates, there is more than one exception, and the exception with which we are concerned is the exception created by proviso (ii) (b) to Section 8 (1) (b), and the effect of that sub-clause is that no license is necessary in the case of a person who purchases agricultural produce in the market outside the yard, from a trader for retail sale. But R. 76 (1) forgets this exemption created in favor of a retail trader and enjoins even that retail trader to obtain a license even in respect of his activity in respect of which an exemption is created. It was hardly necessary to make that rule since the licencing of the activity

in the market area stands fully regulated by Section 8. So we strike down R. 76 (1) which is repugnant to the provisions of Section 8 and we declare it to be invalid to the extent of such repugnancy.

78. Before departing from this rule, we should notice an argument advanced by Mr. Raghuramachar in Writ Petition No. 3827 of 1968 in which the petitioner is a retail trader who complains that the concerned market committee has asked him to obtain a license under Section 8 although he is not bound to take one. So the petitioner asks us to quash the direction by the market committee that he should take a license in respect of the entire retail trade carried on by him. Mr. Raghuramachar asserts that the petitioner is only a retail trader who makes purchase from traders outside the yard and that he makes retail sales of the goods so purchased only to purchasers who require them for domestic consumption and that there is an unreasonable restriction on the part of the market committee that he should obtain a license even for that activity.

79. The impugned direction by the market committee which does not bear any date calls upon the petitioner to take out a license without the specification of the particular activity in respect of which such license is necessary. So it becomes necessary for us to examine the question, whether the petitioner is or is not right in his contention that in respect of the activity which he says he is carrying on, a license is not necessary.

80. Now sub-clause (b) of Clause (ii) of the proviso to Section 8 (1) (b) makes it necessary for a trader to purchase agricultural produce in the market and outside the yard from a trader if he makes that purchase for retail sale. So, the clear meaning of the words "from a trader for retail sale" occurring in this sub-clause is that if he makes a purchase to which that sub-clause refers, no license is necessary. And it is equally clear that even to make a retail sale of the goods so purchased, it is unnecessary for the retail trader to obtain a license. We do not accept the argument advanced on behalf of the market committees which are before us that the exemption is created only in respect of the purchase and not in respect of the retail sales to which that sub-clause refers. The interpretation suggested would lead to the incongruity that a retail trader is under no obligation to take a license to make purchases for retail sale, but a license becomes necessary when, for the implementation of the purpose for which he makes a purchase, he makes a retail sale. We should understand the exemption in a reasonable way and should not read it in a manner which defeats its purpose. The words "for retail sale" reinforce the view that the retail sales to which the sub-clause refers could also be made without obtaining any license such as the one to which Section 8 refers. So, if the petitioner is a person who makes a purchase of agricultural produce from a trader outside the yard but inside the market and makes retail sales of the produce so purchased, it is unnecessary for him to obtain a license to make those retail sales. So we issue a direction that the market committee shall make a suitable modification of its direction.

81. We should now turn to the impugned bye-laws, and we restrict our discussion to the bye-laws about which an argument was presented before us. But before we do so, it would be necessary for us to notice an argument which was directed against the entire body of the bye-laws made by each market committee, after the new Act came into force. The argument that those bye-laws were wholly invalid was constructed on Sections 148 and 149 of the new Act. The stress of the argument was that even in the case of old market committees which acquired the power to function under proviso (c) to Section 154 (1) of the new Act, the preparation of the first bye-laws

under Section 149 was obligatory and that the bye-laws made by these old market committees which were not preceded by the preparation of the first bye-laws under Section 149 were beyond their competence.

82. Section 148 says that a market committee by adherence to the procedure prescribed by it shall have the power to make bye-laws for the regulation of the business and the conditions of trading in the market area generally and with respect to the specific matters enumerated in sub-section (2). But Section 149 says that the first bye-laws on the establishment of a market shall be made by the Chief Marketing Officer in consultation with the Chairman of the first market committee after his nomination to that office. It further enjoins that those bye-laws shall take into consideration the local conditions. Sub-section (1) proceeds to state that those first bye-laws so made shall be deemed to be the bye-laws made by the market committee, until superseded or amended by bye-laws made under Section 148.

83. The argument maintained was that the impugned bye-laws were not preceded by the preparation of the first bye-laws to which Section 149 refers and that they have therefore, no efficacy.

84. But this argument overlooks the provisions of Section 10 and proviso (c) to Section 154 (1) of the new Act. Section 10 (1) prescribes the composition of the first market committee and states that first market committee shall consist of the various categories of persons nominated by Government. So, the words "the first market committee" occurring in Section 149 have reference to the first nominated market committee to which Section 10 refers, and the necessity for the preparation of the first bye-laws by the Chief Marketing Officer of the first market committee arises only when that first market committee comes into being by the process of nomination to which Section 10 refers.

85. A first market committee conforming to that description stands constituted in that way only if an old market committee does not have the authority or the power to continue to function as the market committee even under the new Act. But if under proviso (c) to Section 154 of the new Act it is the duty of the old market committee to 'exercise the powers conferred, perform the functions, and be subject to the liabilities imposed by the provisions' of the new Act and the rules made thereunder until market committees are constituted under the provisions of the new Act, the old market committee whose bye-laws are challenged before us became thus charged with the duty to exercise powers and perform functions under the new Act, And one of the powers that could be exercised and the functions that could be performed is the power to make a bye-law under Section 148.

86. It is of importance to observe in this context that Section 148 which bestows power to make bye-laws does not bestow it only on the second and subsequent market committees to which Section 11 refers. The repository of that power is the market committee which is defined by Section 2 (2) as a market committee constituted for a market area under the Act. If proviso (c) to Section 154 (1) says that an old market committee could exercise power and perform functions under the new Act, that market committee acquires the status of a market committee established under the new Act; if does not, it cannot exercise the powers created by the new Act or perform functions under it. That would be the true position notwithstanding the fact that unlike proviso (a) to Section 154 (1) which creates a legal fiction that certain things done under the old Act must be deemed to have been done under the new Act, proviso (c) to that sub-section only says that an

old market committee shall exercise power and perform functions under the new Act, and so the old market committee acquires the power to make bye-laws under Section 148, although no first bye-laws have been made under Section 149. We do not accept the argument advanced by Mr. Jagannatha Setty that the words "and be subject to the liabilities imposed by the provisions of this Act" occurring in Clause (c) of the proviso to Section 154 (1) can be understood as divesting the old market committee of the power to make bye-laws under Section 148 until first bye-laws are made under Section 149.

87. Any other view would lead to the anomalous position that the old bye-laws which did not fit into the provisions of the new Act could not operate after the new Act came into force, while the old market committee which is charged with the duty to perform functions under the new Act will have no machinery for such enforcement. It is precisely for overcoming a difficulty which the old market committee might encounter in that way until a new market Committee is established under the provisions of the new Act that proviso (c) to Section 154(1) of the new Act incorporates a provision that old market committees though constituted under the old Act shall perform functions and exercise powers under the new Act. The postulate that the old market committee can so function but that it would have no power to make bye-laws under Section 148 without which such functioning becomes impossible, cannot have the support of reason.

88. But it was however urged that even so, the displacement of the old market committees can happen only when a first market committee is nominated under Section 10. Mr. Advocate General in answer to this postulate which Mr. Srinivasan placed before us contended that the provisions of Section 10 are applicable only to a market area which was not in existence under the provisions of the repealed Act and which did not continue under the new Act and that a nominated market committee under its provisions was quite unnecessary in a case in which the old market area continued under the new Act and the old market committee commenced to function under its provisions.

89. We do not read Section 10 in that way. Section 154 is a purely transitional provision as its language clearly discloses. The old market committee is of the nature of a care-taker committee which can function only for a temporary period until a new market committee comes into being in accordance with the provisions of the new Act. The only process by which a new market committee can so come into being is by the observance of the procedure prescribed by Sections 10 and 11 and under their provisions, the first step to be taken for the establishment of a new market committee is to bring into existence a nominated market committee under Section 10 which Government could, in the exercise of the power conferred by it. And, when the first market committee so comes into being, it produces two consequences: it displaces the old market committee, and it becomes necessary for the Chief Marketing Officer of the first new market committee to make the first bye-laws under Section 149, and there can be supersession of those first bye-laws only when the second market committee comes into existence under Section 11 and makes bye-laws under Section 148.

90. The argument placed before us by Mr. Advocate General that in all cases where there is an old market committee the constitution of a first market committee under Section 10 is wholly unnecessary is, in our opinion, unacceptable. The new Act contemplates the establishment of a market committee in a particular way. It is of significance to observe that Section 11 speaks of a second and subsequent market committee. Although that is what the marginal note says, we

should not altogether overlook the description which that marginal note gives, and what is clear from the language of Section 11 is that the elected market committee which comes into being under it is the second market committee and the first market committee which is its predecessor is no other than the nominated market committee to which Section 10 refers.

91. So what is clear is that the election of a market committee under Section 11 must necessarily be preceded by the composition of a nominated market committee under Section 10, and it is only by that process that an old market committee which continues to function under the proviso (c) to Section 154(1) can vacate office.

92. That such is the scheme of the new Act is destructive of the contention that the bye-laws made by the old market committees after the new Act came into force have no validity. In our opinion, the competence to make those bye-laws clearly flows from proviso (c) to Section 154(1) of the new Act although they perish when bye-laws are made by the first market committee under Section 149.

93. We now proceed to consider the validity of the bye-laws made by the three market committees whose bye-laws were challenged before us. They are the market committees of Bellary, Mysore and Yadgir. With respect to the Bangalore bye-laws, no one has presented any argument, and so we refrain from discussing the validity of any of those bye-laws.

94. The Bellary bye-laws whose validity is challenged are bye-laws 12(1) and (2), 23(11) (b) (i), 22 (14) and 35. Bye-law 12(1) enumerates the categories of agricultural produce in respect of which market fee is payable. There is a catalogue of 16 items in that bye-law, and Mr. Venkanna's argument was that there was no notification under the Madras Act which could be deemed to be a notification made under the new Act, declaring items 3 to 16 of bye-law 12(1) as commercial crops. It was urged that the only 2 items of commercial crops which were declared as commercial crops are items 1 and 2, namely, cotton and groundnuts, and that there was no power in the market committee of Bellary to introduce into the enumeration of agricultural produce under the new Act, items or species of commercial crops which had not been declared under the Madras Act to be such.

95. It is clear that until a notification is made under Section 3 of the new Act, the only agricultural produce the marketing of which could be regulated in the Bellary District under the new Act is the notified agricultural produce under Section 5 of the Madras Act and that notification should be deemed to be a notification under Section 3 of the new Act as stated by proviso (a) to Section 154(1) of the new Act. If the crop notified under Section 5 of the Madras Act, is agricultural produce as defined by the new Act, the fact that the notification under the Madras Act called it a commercial crop does not impede the operation of that proviso. We do not also accept the argument of Mr. Venkanna that items 3 to 16 were not declared as commercial crops under the Madras Act. It is seen from a notification made by the Government of the new State of Mysore under Section 4 of the Madras Act on August 19, 1959 that items 3 to 16 enumerated in bye-law 12 (1) had already been declared as commercial crops under the Madras Act, in addition to cotton and groundnuts which had been declared to be commercial crops even by the Government of the Madras State even before the Bellary District became part of the State of Mysore as early as on November 15, 1949.

96. This is not a case in which Mr. Venkanna can challenge the validity of bye-law 12(1) on the ground that the market committee exceeded its power in introducing into the enumeration, agricultural produce which had not been already declared as agricultural produce or its equivalent under the repealed Madras Act. Since the enumeration in bye-law 12(1) had already been made under the repealed Madras Act, that enumeration which should be deemed under Section 154 to be an enumeration made under the new Act is unexceptionable. Clause (2) of bye-law 12 which makes the duty of the commission agent to collect the market fees from the buyer before he delivers the goods to him, is clearly authorized by Sections 65 and 82 of the new Act and was therefore within the competence of the market committee.

97. Before considering the validity of the next bye-law, we should notice the argument that jaggery which is item 12 in bye-law 12(1) is not an agricultural produce and so could not have been included in the enumeration. The argument presented was that jaggery does not fall within the definition of agricultural produce which Section 2 of the new Act incorporates. The relevant portion of that definition which is an inclusive definition reads:

> "agricultural produce" includes,-
> (i) live-stock or poultry,
> (ii) by the labour of any member of one's family, culture, animal husbandry, apiculture, horticulture, pisciculture, forest produce, and........."

98. It was contended that jaggery is an industrial product and not an agricultural product since what grows on the land on which agricultural operations are carried on is sugar-cane and that jaggery is the product manufactured by industrial processes which are carried on subsequently.
99. Now, jaggery was a notified commercial crop under the repealed Madras Act and the Notification by which it was so declared should be deemed to be a notification under the new Act unless it could be said that the notification under the Madras Act is inconsistent with the provisions of the new Act. That inconsistency could exist only if it could be said that although jaggery may be a commercial crop for the purposes of the repealed Madras Act, it is not agricultural produce as defined by Section 2 of the new Act.

100. The main ground on which it was submitted to us by Messrs. Venkanna and Rangaswamy that jaggery is not agricultural produce within the meaning of the definition was that jaggery is in all respects entirely different from sugar-cane, and when sugar-cane loses its identity when it is crushed in a mill and jaggery is produced out of the juice it exudes, it could no longer be said that jaggery which is produced in that way was agricultural produce which the land produced.
101. Now, sugar-cane, it is not disputed, is agricultural produce. Jaggery which is manufactured out of sugar-cane is stated in the dictionary as coarse brown sugar made out of sugar-cane. Although sugar which is contained in the sugar-cane is in the form of sugar-cane when the land grows it, what is really grown on the land is sugar in the form of sugar-cane and if that sugar is expelled from the cane and it becomes jaggery, it is far too unreasonable for any one to suggest that the agricultural produce grown on the land is something very much different from jaggery which is manufactured by that process. So, jaggery is, in our opinion, agricultural produce within the meaning of the definition of agricultural produce which the new Act incorporates. It not only falls within the main definition for the reason that sugar-cane is agricultural produce as it is ordinarily understood, both in the popular sense, as well as by men of business and in the

commercial world, but also for the reason that the inclusive part of the definition says that all produce whether processed or not of agriculture, animal husbandry or horticulture is also agricultural produce. Even if sugar-cane can be understood as some cane which is grown on land, then, it will be a product of horticulture and if jaggery is the product of some kind of processing and jaggery which gets so manufactured by processing is a product of horticulture or agriculture, as the case may be, it is agricultural produce within the meaning of the definition in the new Act.

102. So, if jaggery was called a commercial crop in the notification under the Madras Act, it means no more than that it is a crop which has a special value in the commercial world. It does not follow that it is not agricultural produce provided it conforms to the definition of agricultural produce which the new Act incorporates.

103. That that is so is clear from the enunciation made by the Supreme Court in AIR 1962 SC 97, which emphasized the similarity between the provisions of the Bombay Act and those of the Madras Act. And so, no argument could be constructed to the contrary on the fact that the crop the purchase and sale of which is regulated by the Madras Act is called a commercial crop.

104. So, if under the Madras Act jaggery became a notified commercial crop, and jaggery is agricultural produce within the meaning of the definition under the new Act, the notification under the Madras Act should be deemed to be a notification made under Section 3 of the new Act declaring the intention of the State Government to regulate the marketing of jaggery under the provisions of the new Act. It is by that process that jaggery which by its own attributes falls within the definition of agricultural produce which the new Act contains became notified agricultural produce for the purposes of the new Act.

105. We are of the opinion that bye-law 22(14) and bye-law 23(11)(b)(i) are not valid bye-laws. Bye-law 22(14) authorises the market committee to determine how many assistants shall work under the traders, commission agents and brokers. Although Mr. Achar appearing for the Bellary market committee asserted that Section 63(2)(iv) of the new Act authorised the market committee to make the determination to which bye-law 22(14) refers, it is clear that no such power is bestowed by the Act. Section 63(2) does no more than to empower the market committee to supervise the conduct of the market functionaries and not to delimit the number of functionaries who may work as assistants under a trader, commission agent or broker. So we declare that Bellary bye-law 22(14) to be invalid. There is nothing in Section 148 or 131 which creates that power either.

106. Bye-law 23 (11) (b) (i) is clearly repugnant to the provisions of the Act. It says that the quantity of agricultural produce purchased by a retailer shall not exceed three quintals for each transaction in respect of some categories and five quintals in respect of others. There is no provision in the Act which creates power in the market committee to restrict the purchase made by the retailer in that way.

107. Section 2 (37) which defines 'retail sale' empowers the market committee to specify the quantity which could be sold at a retail sale to a consumer for domestic consumption. But neither the definition nor any other provision in the Act precludes a retailer from purchasing as much of agricultural produce as he desires to purchase subject, however, to the provisions of Section 85 which enjoins the obtaining of a license of the appropriate classification. So we strike down bye-

law 22 (11) (b) (i) of the Bellary Agricultural Produce Marketing Committee, as invalid.

108. Bye-law 35 which prohibits the publication of the proceedings of the market committee, except with the authority of the market committee, is in our opinion quite a good bye-law, since the power to so regulate the proceedings clearly emanates from Section 49(2) of the Act.

109. Among the bye-laws made by the Mysore Agricultural Produce Market Committee, the challenge is to bye-laws 23(10)(b)(i) and (ii), 23(15), 23(20) (1) and 23(2) (3). We are of the opinion that the only bye-law which invokes the condemnation of invalidity is bye-law 23(10)(b)(ii). The others are, in our opinion, good bye-laws.

110. Bye-law 23 (10)(b)(ii) is similar to bye-law 23 (11) (b) (i) of the Bellary Market Committee. This bye-law says that the total quantity sold by a retail seller during the year shall not exceed fifteen thousand rupees. The Act does not confer any power on the market committee to impose that restriction upon the retailer. It is obvious that the market committee which made this bye-law has entirely misunderstood the provisions of Section 85(1)(iv) which says that a trader whose purchase turnover of agricultural produce which he purchases for sale to consumers for domestic consumption exceed fifteen thousand rupees shall not be classified as a 'D' class trader. But that does not mean that the turnover of a trader could not exceed fifteen thousand rupees. All that it says is that if that happens, he gets into the higher class. So we strike down bye-law No. 23(10)(b)(ii).

111. Though bye-law No. 23(10)(b)(1) is awkwardly worded it is in our opinion a good bye-law, for it should be understood to prescribe the upper limit of the quantity which a retail trader could sell to a consumer for domestic consumption in order to impress upon the transaction the character of a retail sale so that in respect of that retail sale the trader could earn the exemption which is created by Proviso (ii)(b) to Section 8(1)(b) of the new Act.

112. Mr. Ramachandra Rao appearing for the market committee asks us to explain this clause of the bye-law in that way. We make it clear that it does not prohibit the retailer from making sales of larger quantities so long as he does not claim for the transaction the status of a retail sale as defined by the Act or the exemption which is created by the Act.

113. Bye-law 23(15) regulates the acceptance of bids and preserves to the seller the option to refuse the highest bid. That bye-law does no more than to incorporate a condition which is usually to be found in all auction sales and the power to make this bye-law is to be found in Section 76 of the Act.

114. Bye-law 23(10)(1) says that the market shall be open during specified hours and 23 (2) (3) says that no licensed market functionaries shall transact any business or do anything in connection therewith except during the hours of trading on working days. It is difficult to make any complaint against this provision in the bye-law.

115. Bye-laws 2(4) and 2(5)(B) are the two bye-laws of Yadgir market committee which were challenged in the writ petition presented by Mr. Jagannatha Shetty, who, however, tells us that this challenge no longer survives in view of the notifications which were made during the pendency of these writ petitions and so we say nothing about it.

116. What remains for us to observe is that what we have said about the market fees in cases where the yards were not in existence when the new Act came into force, but were only established during the pendency of these writ petitions, is equally applicable to the license fee to which Section 72 of the new Act refers. So, during the period antecedent to December 7, 1968, when the yards were established in those areas and during the period prior to December 16/19, 1968, when they were established in the Hospet area, the license fee which was payable was the license fee prescribed by the bye-laws under the old Act.

117. These writ petitions succeed to the extent indicated and fail in other respects.

118. No costs.

Order accordingly.